when he took them into custody; if he did not do so, then it is clear law, on the authority of *Christie v. Leachinsky*[2], that the arrests cannot, on any view of the facts, be justified. On this point there is unfortunately a serious conflict of evidence. Jones stated that he told the first petitioner in English why he was being arrested but said very candidly that he could not remember whether he also told the second petitioner. The first petitioner, on the other hand, says he inquired in Malay why he was being arrested and was told by Jones in English not to ask too much but to follow him and he adds that a Malay detective spoke to him in Malay to the same effect. I agree with counsel for the defendant that the fact that Jones said that he informed the first petitioner but admitted he could not remember whether he also spoke to the second petitioner is a strong indication that this witness was trying, to the best of his recollection, to give the Court a true account of what occurred. But the petitioners were both quite definite that they were not told and did not know why they had been arrested until they got to the police station. On the face of it, the testimony of these witnesses appears to be irreconciliable but it must be remembered that there were serious difficulties of language on both sides and it may well be that each party assumed too readily that his meaning was being conveyed adequately to the other and that, as a result, there was misapprehension and misunderstanding between them. The onus, however, is on the defendant to prove that the petitioners were informed of the reason for their arrest or at least that all reasonable steps were taken to convey the reason to them at the time of their arrest, and in my opinion the defendant has not discharged it.

The second subsidiary matter relates to the photographing and fingerprinting of the petitioners at the Criminal Investigation Department on the morning of the 23rd March. The petitioners had been released by the Magistrate on bail earlier that morning and the police had no authority to take them into custody again in order to convey them to the Criminal Investigation Department for fingerprinting; their action, in effect, amounted to a second false imprisonment. It is right that I should add that counsel for the defendant did not seek to justify the action of the police in this particular matter.

It remains to consider the question of damages. It was pointed out by Scott L.J. in *Dumbell v. Roberts*[3] that where a person has been wrongfully arrested and detained, it is in the public interest that sufficient damages should be awarded in order to give reality to the protection afforded by the law to personal freedom. Furthermore as Lawrence L.J. observed in *Walter v. Alltools Ltd.*[4], a false imprisonment does not merely affect a man's liberty; it also affect his reputation. Moreover in the present case there are aggravating circumstances. The petitioners were woken up and arrested in the middle of the night. The first petitioner was able to put on a few day clothes but his wife, who was five months pregnant, was not and she went to the police station wearing her night pyjamas. They were kept at the police station from midnight until 5.00 a.m. before being released on police bail. Later that morning after appearing before the Magistrate, they were again released on bail but were re-arrested outside the courtroom and taken to the Criminal Investigation Department to be fingerprinted and as Scott L.J. remarked in the case to which I have referred, fingerprinting which is the consequence of an unjustifiable arrest may be an element in the assessment of damages. Taking all these various matters into account, I am of the opinion that a reasonable amount to award as damages in this case is $1,000 to the first petitioner and a like sum to his wife, the second petitioner. Accordingly there will be judgment for each of the petitioners for $1,000 with costs.

Order accordingly.

Solicitors: *Christopher & Francis.*

Re M. S. E. ANGULLIA, DECD. BRITISH MALAYA TRUSTEE & EXECUTOR CO. LTD. & ORS. v. ATTORNEY-GENERAL

[O. C. J. (Whyatt C.J.) July 3, 1957]

[Singapore — Originating Summons No. 48 of 1957]

Will — Charitable trust — Trust to be performed in a foreign jurisdiction — Whether direction in Will has become impossible or impracticable.

By his Will the testator bequeathed the income of certain property in Singapore to trustees to be expended in charity. He directed that 25% of the income be sent to Mecca and there expended in charity in such manner as the trustees might think expedient; 25% to be sent to Medina for the same purpose and 10% to be sent to Baghdad for the same purpose. The trustees sought the directions of the Court as to the future application of the income of the charity so far as it relates to distribution in Mecca, Medina and Baghdad. It was argued for the trustees that the trust had become impossible or impracticable because (a) the testator had omitted to appoint trustees in Mecca, Medina and Baghdad and to state the object of his charity in these places and therefore the trustees in Singapore were not able to see to the proper application of the trust moneys, and (b) that it was difficult to remit money to Mecca and Medina.

Held: (1) the fact that the gift in this case was for charity generally without any indication of the objects does not make it invalid for uncertainty and the Crown may appoint the objects of the charity by means of a scheme;

(2) the trustees had not shown that it was impossible or impracticable to carry the original trust into effect;

(3) the trust was a valid charitable trust and a scheme should be settled by the Attorney-General in consultation with the trustees for the administration of the charity.

Cases referred to:—

(1) *Attorney-General v. Matthews* (1676) 2 Lev. 167; 83 E.R. 501.

(2) *In re Robinson* (1931) 2 Ch. 122.

(3) *Attorney-General v. Herrick* (1772) Amb. 712, 27 E.R. 461.

(4) *In re Geck, Freund v. Steward* 69 L.T. 819.

ORIGINATING SUMMONS.

N. A. Mallal for the plaintiffs.

A. V. Winslow (Sr. Crown Counsel) for the defendant.

Whyatt C.J. : — By his will dated the 30th June 1898, the testator, Mohamed Salleh Eusoof Angullia, bequeathed the income of certain property in Singapore to trustees to be expended on charity in the following shares or proportions : 25 per cent to be sent to Mecca and there expended on charity in such manner as the trustees might think expedient; 25 per cent to be sent to Medina for the same purpose; 10 per cent to be sent to Baghdad for the same purpose; 10 per cent to Randir in the Presidency of Bombay for the same purpose; 10 per cent to be expended in charity in Singapore; 10 per cent to be expended in alms to persons who say prayers at the testator's grave and in feeding the poor and, finally, 10 per cent to be expended on alms for poor members of the testator's family. The amount of the income is approximately $10,000 per annum and certain questions have arisen with regard to the three shares, amounting to $6,000 per annum, which the testator directed should be sent to Mecca, Medina and Baghdad respectively.

From the date of the testator's death in 1904 until the First World War the trustees apparently experienced no difficulty in remitting the income to Mecca, Medina and Baghdad and distributing it in accordance with the terms of the will but after the outbreak of hostilities it became impossible to continue the distribution of income in those places and it was therefore accumulated during the period of the War by the trustees in Singapore. But according to an affidavit sworn by one of the trustees in 1939 in proceedings relating to the administration of this trust, the ordinary distribution of income was continued after the First World War. However, in an affidavit sworn in the present proceedings, it is deposed that "no moneys have ever been remitted, at least not since 1939, to Mecca, Medina or Baghdad." Consequently considerable sums have accumulated in Singapore, some of which have, unfortunately, been misappropriated or misapplied at various times by one of the trustees. The position now is that the present trustees are seeking the directions of the Court as to the future application of the income of this charity so far as it relates to distribution in Mecca, Medina and Baghdad.

It is clear from the affidavit of Kassim Mohamed Moonshee (one of the trustees appointed after consultation with and with the approval of the Muslim Advisory Board, Singapore), that he would much prefer to apply this income in maintaining and improving the Mosque in Serangoon Road in Singapore which is in a bad state of repair and inadequate to meet the present requirement of the Muslim population in that neighbourhood, rather than send it overseas to be used for charitable purposes in Mecca, Medina and Baghdad. It is not, however, for this Court to decide whether the maintenance of the Mosque in Singapore is a more deserving charity than expenditure on charitable purposes in Mecca, Medina and Baghdad. It is quite clear and, indeed counsel for the trustees did not seek to argue to the contrary, that if the original trust is capable of taking effect, the Court has no authority to vary it and to apply the charity funds in a different manner merely because the Court thinks it might be more beneficial to the public to do so or because the Court surmises the testator would have preferred a different distribution if he could have foreseen the changes which have since taken place since the gift took effect; as was pointed out in *Attorney-General v. Matthews*[1], a gift for the benefit of the poor cannot be used for rebuilding a cathedral.

The first question to be decided, therefore, is whether or not the directions of the testator that 25 per cent of the income be sent to Mecca, 25 per cent to Medina and 10 per cent to Baghdad, and "there expended in charity in such manner as the trustees think expedient" have in fact become impossible or impracticable.

In support of the view that the original trust is impossible or impracticable, the trustees advance arguments under two broad heads, the first being of a technical character and the second being factual and depending upon evidence. As regards the first head, it is said that the testator omitted to appoint trustees in Mecca, Medina and Baghdad to whom the moneys could be remitted and omitted also to state the objects of his charity in these places, with the result that the trustees in Singapore are not able to see the proper application of the trust moneys and therefore the trust should be treated as having failed. It is, however,

plain, as Maugham J., as he then was, pointed out in *In re Robinson*[2] that Courts of Equity have for at least 200 years treated charitable purposes as not confined to charitable purposes within the realm and consequently it cannot be said that this particular charity is bad merely because it has to be performed in a foreign jurisdiction. Nor is it any objection that the testator has not specified the objects of his charity. In *Attorney-General v. Herrick*[3] a testator devised the residue of his estate to "charitable and pious uses generally" and the Court held that such a devise was not void for uncertainty for the Crown might appoint the objects. So also in the present case the gift for charity generally without any indication of the objects is not void for uncertainty and the Crown may, by its appropriate officer in the Colony, namely, the Attorney-General, appoint the objects of this charity by means of a scheme. With regard to the objection that the Court cannot control the application of trust moneys if they are remitted abroad under a scheme settled by Attorney-General, this point was considered in *In re Geck; Freund v. Steward*[4]. In that case there was a charitable bequest in favour of necessitous poor persons of Obermoerlen in Germany with a direction that the trustees should distribute the funds in conjunction with the burgomaster for the time being of the town. In the course of his judgment Lindley L.J. expressed himself in the following terms :—

> "It is very true that if the trustees here hand over the money to the burgomaster and the burgomaster misapplies it, the Court has no control over him as to the past. Relief and redress must be sought in the German Courts. But it is a mistake to suppose this Court could not stop sending him any more. I take it that the Court would have jurisdiction to do that; and that is sufficient for the present purpose."

Smith L.J. similarly expressed himself thus :—

> "It struck me that if the burgomaster of Obermoerlen chose to put the money in his pocket instead of giving it to the poor, the Court could not control him. No, but they could control the trustee who is here and refuse to let him have any money."

In my opinion, therefore, the technical objections to the validity of this charitable bequest advanced under the first head fail.

It remains to consider whether or not the practical difficulties of carrying out this charity at the present time are such as to lead to the conclusion that the original trust is no longer capable of taking effect. In support of the view that the charity has become impracticable, the trustee, Kassim Mohamed Moonshee, relies on the fact that as a result of the operation of the Exchange Control Regulations, it is now difficult to remit moneys from Singapore to Mecca and Medina. The evidence produced by the trustee on this point can hardly be described as cogent and certainly not as conclusive. The most that Kassim Mohamed Moonshee is able to depose to in his affidavit is that: "It is not at all an easy matter to obtain permission from the Authorities to remit money to Mecca and Medina." He does not say that the trustees have applied for permission and been refused. The amount involved is not large — approximately $5,000 per annum — and it may well be that the Exchange Controller would, if asked, grant permission to remit these moneys to Mecca and Medina. At all events, in the absence of evidence from the Exchange Controller on this point, I am not prepared to assume that permission would be refused. Furthermore, this argument has no application to the Baghdad charity since Baghdad is within the Sterling area. In my opinion, it has not been shown that the exchange difficulties are so great as to make it impossible to carry out the testator's wishes in this matter. Accordingly, in my view, this bequest for charitable purposes in Mecca, Medina and Baghdad has not become impracticable and is a good and valid charitable gift.

I would, however, refer to the fact that the testator has not described his wishes with particularity and it is, therefore, necessary to fill in a number or details in order to carry the gift into effect. Apparently, the trustees, during the period from 1904 until 1914 when the First World War broke out and possibly for a period after that war were able to carry out this trust without a detailed scheme, but counsel on behalf of the Attorney-General has submitted that a scheme should now be drawn up, and I agree that this is a proper case for a scheme. Accordingly, therefore, I direct that a scheme be settled by the Attorney-General in consultation with the trustees, for the administration and application of this income for charitable purposes in Mecca, Medina and Baghdad. It will, of course, be necessary to make inquiries from these places as to suitable means for completing the trust and, in view of the remoteness and difficulties of communication, at least so far as Mecca and Medina are concerned, there may be some delay and difficulty in obtaining the necessary information to settle a scheme. Nevertheless, I do not think these difficulties should prove insuperable if a genuine attempt is made to overcome them. The Court was informed during the course of the argument that some organisation sponsored by the Singapore Government already exists for helping pilgrims who go to Mecca from Singapore, if they should become

distressed and require assistance whilst on their pilgrimage, and if it is possible to set up an organisation to give assistance of this character on a governmental basis, it should not be impossible to devise a scheme to carry out the testator's charitable intentions in the present case.

I think, therefore, the proper order is, first, to declare that this trust is a valid charitable gift and secondly, to order that a scheme be settled by the Attorney-General in consultation with the trustees, for the administration of this charity.

Order accordingly.

Solicitors: *Mallal & Namazie.*

LOH CHIN & ORS. v. THE REGISTRAR OF TRADE UNIONS

[A. C. J. (Buhagiar J.) June 19, 1957]

[K. L. — Civil Appeal No. 31 of 1956]

Trade Union Enactment, 1940, ss. 10, 12, 14 and 16 — Refusal of Registrar to Register — Appeal — Trade Union (Appeal to the Minister for Labour) Regulations, 1949 — Act of Registrar in granting or refusing application for registration — Duty of Registrar — Minister — Functions of.

This was an appeal from a decision of the Minister for Labour upholding the decision of the Registrar of Trade Unions refusing registration of the Pan-Malayan Rubber Workers Union. The ground of appeal was briefly that the Minister failed to act in accordance with the principle of natural justice.

Held: (1) the functions of the Minister in the present case were similar to those of administrative tribunals. This does not mean that the Minister may act arbitrarily and ignore the provisions of law laid down for the hearing of appeals; it is only in that respect that he is to act judicially; he must conform with the procedure laid down by statute;

(2) the Courts should not interfere with the manner in which such ministerial discretion has been exercised.

Provisions of the Trade Union legislation dealing with registration of trade unions and appeal from decisions of the Registrar considered.

Nature of act of Registrar in granting or refusing applications for registration of a trade union considered.

Cases referred to:—

(1) *R. v. Manchester Legal Aid Committee* (1952) 2 Q.B. 427.

(2) *R. v. Registrar of Friendly Societies* L.R. 7 Q.B.D. 741, 743.

(3) *Local Government Board v. Arlidge* (1915) A.C. 120.

(4) *Shell Co. of Australia v. Federal Commissioner of Taxation* (1931) A.C. 275, 295.

(5) *Labour Relations Board of Saskatch v. John East Iron Works Ltd.* (1949) A.C. 134.

CIVIL APPEAL.

M. B. Brash for the appellants.

C. M. Sheridan (Ag. Solicitor-General) for the respondent.

Buhagiar J.: — This is an appeal under section 17 of the Trade Unions Enactment, 1940 (F.M.S. No. 11 of 1940) from a decision of the Minister for Labour upholding the decision of the Registrar of Trade Unions refusing registration of the Pan-Malayan Rubber Workers Union.

On the 1st February, 1956, Tan Tuan Boon, as Honorary Secretary and seven other members of the said Union made application to the Registrar of Trade Unions under section 9 of the Trade Union Enactment for registration as a trade union.

On the 23rd June, 1956, the Union was served with a notice by the Registrar under section 14 of the Enactment informing the applicants that the application for registration had been refused on the grounds that the Union was likely to be used for unlawful purposes.

On the 27th June, 1956, the Pan-Malayan Rubber Workers Union preferred an appeal from the decision of the Registrar to the Minister for Labour under section 16 of the Enactment and under the Trade Union (Appeal to the Minister for Labour) Regulations, 1949 (L.N. 169 of 1949); the appeal was in the form of a memorandum in writing accompanied by a copy of the grounds of refusal.

The Registrar of Trade Unions made a statement dated the 10th July, 1956, in reply to the memorandum setting out facts relating to the refusal of registration.

The Pan-Malayan Rubber Workers Union filed a counter-reply dated the 23rd July, 1956. Two copies of this counter-reply were sent to the Minister for Labour with a request that he consider using his powers under regulation 6 of the Trade Union (Appeal to the Minister for Labour) Regulations, 1949; the union as appellants stated that they wished to put questions to the various persons alleged by the Registrar to have made records and expressed opinions; they requested permission to file affidavits by the principal officers of the Union stating that they were not and never had been Communists or Communist sympathisers and generally rebutting the allegations made in the Registrar's reply; they also requested leave that they might be represented by counsel at the hearing.

On the 13th August, 1956, the Union wrote to the Minister asking when the matter was coming on for hearing and for his ruling on the request for permission to file affidavits and for leave to be represented by